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| 10/622,409  | 07/18/2003  | Angela Temple        | 14892-004001                    | 4188                   |
| 26231   | 7590        | 06/04/2007           |                                 |                        |
| FISH & RICHARDSON P.C.<br>P.O. BOX 1022<br>MINNEAPOLIS, MN 55440-1022 |             |                      | EXAMINER<br>AUGHENBAUGH, WALTER |                        |
|   |             |                      | ART UNIT<br>1772                | PAPER NUMBER           |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/622,409

Applicant(s)

TEMPLE ET AL.

Examiner

Walter B. Aughenbaugh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 17-22 is/are pending in the application.
- 4a) Of the above claim(s) 17-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 23, 2007 (Amdt. D) has been entered.

#### ***Acknowledgement of Applicant's Amendments***

2. The amendments made in claim 1 in the Amendment filed on April 23, 2007 (Amdt. D) have been received and considered by Examiner.

#### ***WITHDRAWN REJECTIONS***

3. All rejections of record in the previous Office Action mailed December 22, 2006 have been withdrawn due to Applicant's amendments in claim 1.

#### ***Claim Objections***

4. Claim 2 is objected to because of the following informalities:

The language of claim 2 is contradictory to that of claim 1 since claim 1 requires that the material is a "single material", so it cannot "include[] a first material and a second material" as claimed in claim 2, which depends upon claim 1.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

5. Claims 1-7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Benson (U.S. Patent No. 6,139,514).

Benson teaches a finger bandage, item 10 (that corresponds to the claimed “eye wipe”, Fig. 1: see end of text of rejection of claim 1 for discussion explaining why the finger bandage corresponds to an “eye wipe”), comprising a single material (tubular member of elastically resilient material, item 12) forming one cavity with one opening in its entirety (col. 2, lines 33-41 and Fig. 1), the material configured to encircle a perimeter of a finger (Fig. 1) and shaped, with a finger inserted in the cavity, to fit in a region of an eye near its tear duct because the tip of a finger is shaped to fit in a region of an eye near its tear duct, and the tip of the finger bandage, item 10, of Benson is shaped similarly to the tip of a finger (Fig. 1), so the tip of finger bandage, item 10, is shaped to fit in a region of an eye near its tear duct. The material (tubular member of elastically resilient material, item 12) is adapted to remove biological matter released from the eye at a position at or near the tear duct since Benson teaches that “[t]he general dry and rough nature of the exterior of the tubular material allows the wearer to perform common tasks requiring a high degree of dexterity” (col. 3, lines 34-36): removing “biological matter released from the eye at a position at or near the tear duct” (as recited by Applicant) is a “common task[] requiring a high degree of dexterity” because a person wants to be careful not to injure one’s eye with one’s finger, an item surrounding the finger, or an item held by the person to remove the biological matter, when removing the biological matter. Examiner notes that the requirement that one be careful to not injure one’s eye when removing the biological matter is not a requirement that a material with any particular degree of softness, etc., be used as the material that would potentially contact the eye when the biological matter is contacted with the material, so the relative softness, etc., of the particular material of Benson is not at issue based on the current language of the claim: any person, as long as that person is careful, and performs this “common

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task” (Benson’s words) with a sufficiently “high degree of dexterity” (Benson’s words) can “remove biological matter released from the eye” with an object that is not soft, and even potentially dangerous to use around one’s eyes, for example, the end of a pen that is opposite the point of the pen can be used to “remove biological matter released from the eye” as long as that person is careful. The finger bandage, item 10, of Benson can be considered to be an “eye wipe” when it is used as an eye wipe. Furthermore, while the following statement is not required to show anticipation of claim 1, it is very reasonable to expect that one wearing the finger bandage of Benson because one’s finger has a cut on it, say one’s pointer finger, would wipe one’s eye with the finger covered with the bandage out of habit, without considering the fact that there is a bandage on that finger (perhaps because the person forgot that there is a bandage on the finger, or that person is not concerned that the bandage would harm the person’s eye [again, at least in part, because that person would be careful not to injure the eye, regardless of what object is used to remove the biological matter]), at which point the bandage would be used as an “eye wipe”. Even furthermore, the bandage of Benson would be considered to be an “eye wipe” even if it never used as an eye wipe because at any point the owner/user of the bandage could use it as such.

In regard to claim 2, the finger bandage of includes a first material (tubular member of elastically resilient material, item 12) and a second material (pad of absorbent material, item 22) coupled together to form an elongated cavity (col. 2, lines 43-50 and 33-36 and Fig. 1).

In regard to claim 3, Benson teaches that the cavity is substantially tubular with the opening at one end and tapering at the other end (Fig. 1).

In regard to claim 4, since Benson teaches that the elastically resilient material of the tubular member of elastically resilient material, item 12, "may be a woven fabric" (col. 2, lines 36-38), Benson indicates that the elastically resilient material need not be fibrous (need not be a fabric, because it "may be a woven fabric"), so the elastically resilient material of Benson may also be non-fibrous (col. 2, lines 36-38).

In regard to claim 5, the elastically resilient material of Benson is a unitary piece of material (col. 2, lines 33-41 and Fig. 1).

In regard to claim 6, the elastically resilient material of Benson is operable to absorb moisture in the instance where the elastically resilient material, item 12, is a woven fabric (col. 2, lines 36-38), since fabric is operable to absorb moisture.

In regard to claim 7, the material of Benson (tubular member of elastically resilient material, item 12) is circular in cross section (and in shape) since it surrounds a finger (Fig. 1).

In regard to claim 9, an eye irritant solution is substantially absent from the material of Benson (tubular member of elastically resilient material, item 12) because Benson does not teach that the material of Benson comprises an eye irritant solution (col. 2, lines 33-41).

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benson (U.S. Patent No. 6,139,514).

Benson teaches the finger bandage as discussed above in regard to claim 1. While Benson fails to explicitly teach that the material (tubular member of elastically resilient material, item 12) has a maximum dimension of less than about two inches, Benson teaches that the finger bandage is for a finger (Fig. 1). Since Benson teaches that the finger bandage is for a finger, it would have been obvious to one of ordinary skill in the art at the time the invention was made to

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have fabricated the tubular member of elastically resilient material, item 12, such that it is sized such it has a maximum dimension that is approximately equal to the maximum dimension of the desired length of the bandage, taking into consideration such factors as the size of finger intended to be covered (for instance, if the bandages are for children, one of ordinary skill in the art would necessarily fabricate the material such that it has some length that is less than 2 inches [because some children do not have fingers that are longer than 2 inches]).

7. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benson (U.S. Patent No. 6,139,514) in view of Wilkman (U.S. Patent No. 6,305,531).

Benson teaches the finger bandage comprising the tubular member of elastically resilient material, item 12, as discussed above in regard to claim 1.

In regard to claim 10, Benson fails to explicitly teach that the material (the tubular member of elastically resilient material, item 12) is at least partially saturated with a non-eye irritating solution.

Wilkman, however, discloses wipes that are impregnated with a formulary selected for a particular purpose, such as a cleaning fluid, a baby wipe or an eye makeup remover (col. 1, lines 10-13 and 27-33 and col. 4, lines 9-11 and 19-22). Since Wilkman discloses the use of wipes as a baby wipe and as an eye makeup remover, both of which are necessarily non-eye irritating, and both of which contain cleaning solutions, one of ordinary skill in the art would have recognized to have dipped the finger bandage in a non-eye irritating cleaning solution such as a baby wipe solution or an eye makeup remover solution (therefore to have at least partially [with emphasis] saturated the material of the tubular member of elastically resilient material, item 12, with a non-eye irritating cleaning solution) as taught by Wilkman, prior to attempting to remove biological

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matter released from the eye” in order to more effectively “remove biological matter released from the eye” while also preventing eye irritation via use of a non-eye irritating cleaning solution.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have to have dipped the finger bandage in a non-eye irritating cleaning solution such as a baby wipe solution or an eye makeup remover solution (therefore to have at least partially [with emphasis] saturated the material of the tubular member of elastically resilient material, item 12, with a non-eye irritating cleaning solution) as taught by Wilkman, prior to attempting to remove biological matter released from the eye” in order to more effectively “remove biological matter released from the eye” while also preventing eye irritation via use of a non-eye irritating cleaning solution.

In regard to claim 11, Benson fails to explicitly teach that the material (the material of the tubular member of elastically resilient material, item 12) is at least partially saturated with a solution operable to remove makeup.

Wilkman, however, discloses wipes that are impregnated with a formulary selected for a particular purpose, such as an eye makeup remover for removing eye makeup (col. 1, lines 10-13 and 27-33 and col. 4, lines 15-22). Since Wilkman discloses the use of wipes as a baby wipe and as an eye makeup remover, both of which are necessarily non-eye irritating, one of ordinary skill in the art would have recognized to have dipped the finger bandage in an eye makeup remover solution (therefore to have at least partially [with emphasis] saturated the material of the tubular member of elastically resilient material, item 12, with an eye makeup remover solution) as taught by Wilkman, prior to attempting to remove biological matter released from the eye” and/or eye



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makeup in order to more effectively “remove biological matter released from the eye” and/or to remove eye makeup while also preventing eye irritation via use of a non-eye irritating cleaning solution.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have dipped the finger bandage in an eye makeup remover solution (therefore to have at least partially [with emphasis] saturated the material of the tubular member of elastically resilient material, item 12, with an eye makeup remover solution) as taught by Wilkman, prior to attempting to remove biological matter released from the eye” and/or to remove eye makeup in order to more effectively “remove biological matter released from the eye” and/or eye makeup while also preventing eye irritation via use of a non-eye irritating cleaning solution.

#### ***Response to Arguments***

8. Applicant’s arguments presented in Amdt. D regarding all rejections of record in the previous Office Action are moot due to the withdrawal of all rejections of record in the previous Office Action mailed December 22, 2006 in this Office Action due to Applicant’s amendments in claim 1.

#### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Walter B. Aughenbaugh

5/26/07

*WB Aug*  
5/26/07